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10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 LUIS TORRES, in individual; and
14 DOROTHY TORRES, a.k.a. DOTTY
15 TORRES, an individual,

16 Plaintiffs,

17 v.

18 JAYCO, INC., An Indiana Corporation,
19 and DOES 1 through 20, inclusive,

20 Defendants.

Case No. 5:24-cv-00065-KK (SHKx)
(Removed from Riverside Superior
Court—Case No. CVSW2306678)

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO
TRANSFER VENUE TO INDIANA
FEDERAL COURT PURSUANT TO
28 U.S.C. § 1404(A); DECLARATION
OF ANDREW P. MATERA, ESQ.**

Date: March 14, 2024

Time: 9:30 a.m.

Dept.: 3

Action Filed: August 8, 2023

Trial Date: None

Assigned to **THE HON. KENLY
KIYA KATO**
Dept. 3

21 Plaintiffs Luis Torres and Dorothy Torres submit this Opposition to Defendant
22 Jayco, Inc.'s Motion to Transfer Venue to Indiana Federal Court.

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1 **I. INTRODUCTION**

2 Pursuant to unwaivable statutory rights and remedies, Plaintiffs Luis Torres
3 and Dorothy Torres, a.k.a. Dotty Torre’s (“Plaintiffs”) seek up to \$1,099,357.29 as a
4 result of Defendant Jayco, Inc.’s (“Defendant” or “Jayco”) violation of California’s
5 *Song-Beverly* Consumer Warranty Act. This action stems from Plaintiffs’ purchase
6 of a new 2023 Alante 29F (“Consumer Good” or “Good”) from Stier’s RV Centers,
7 LLC, DBA Camping World RV Sales, a Jayco dealership, with 2,269 miles on the
8 odometer at the time of purchase, for \$366,452.43. Plaintiff presented the Good for
9 no less than fifteen (15) nonconformities and on no less than five (5) occasions, with
10 the vehicle out of service for at least seventy-seven (77) days, by the time this matter
11 was filed. Despite Plaintiffs contacting Defendant Jayco directly, Defendant failed to
12 commence an investigation and perform an evaluation of whether or not the
13 Consumer Good qualified for a statutory repurchase or replacement. Left with no
14 other alternatives, Plaintiffs filed suit.

15 Defendant, an Indiana corporation, now seeks to force Plaintiffs to do what
16 relevant statutory provisions do not allow: waive statutorily unwaivable rights and
17 compel Plaintiffs to seek relief in another forum with no connection to the sale that
18 occurred between Plaintiffs and the independently owned and operated California-
19 based Jayco dealership, or any of the repair attempts that occurred only in the state of
20 California.

21 Defendant Jayco manufactures motorhomes and distributes them nationwide.
22 Jayco clearly derives substantial benefits from its nationwide distribution of products
23 but seemingly hopes to avoid the burdens of responding to claims questioning the
24 integrity of products in the very jurisdictions that it sells product in. It hopes to do so
25 by quashing the enforcement of a consumer’s rights by means of a surreptitiously
26 placed forum selection clause in its warranty documentation.

27 Jayco has referred to a document which it cannot prove that these Plaintiffs
28 received and Jayco’s apparent effort to “authenticate” the documents is an utter

1 failure. In fact, Defendant Jayco failed to establish that the warranty documentation
 2 that Jayco’s motion supplies as Exhibit “B” was even provided to the Plaintiffs. As
 3 Plaintiffs show herein, Jayco’s Consumer Affairs Manager’s declaration falls flat as
 4 she was not involved in the sale, has no personal knowledge of the transaction, and
 5 has not provided any credible evidence from the selling dealer.

6 Moreover, even if Jayco established that a valid forum selection clause was in
 7 place, it cannot as a matter of law enforce it. This is because the warranty
 8 documentation contains a jury trial waiver. As this clause is also unconscionable
 9 and contrary to strong California public policy, it is “unenforceable and void” under
 10 the language of Song-Beverly. Indeed, as detailed herein, granting Jayco’s motion
 11 would deprive Plaintiffs of a fair opportunity to adequately present their case and all
 12 but deprive them of their “day in court” thus denying substantial justice.

13 Lastly, the unenforceability of the Warranty terms is not cured by
 14 Defendants’ offer of stipulation to the application of California law in an Indiana
 15 court. Jayco’s belated stipulation is not accepted by Plaintiffs and is ineffective
 16 because Plaintiff’s unwaivable rights under state and federal law are clear as
 17 described herein. Because Defendants have failed to provide this court with a
 18 legally valid basis for their motion to transfer venue, the motion must be denied.

19 **II. DEFENDANT INITIALLY BEARS THE BURDEN OF SHOWING** 20 **THE FORUM SELECTION CLAUSE IS ENFORCEABLE**

21 Defendants argue that the mandatory nature of Jayco’s forum selection clause
 22 places the burden of proof on Plaintiffs, to show why the clause should not be
 23 enforced. This is inaccurate.

24 Although it is true that ordinarily the party opposing enforcement of a forum
 25 selection clause bears the burden of proving why it should not be enforced, “**that**
 26 **burden is reversed when the claims at issue are based on unwaivable rights**
 27 **created by California statutes.”** (*Verdugo v. Alliantgroup L.P.* (2015) 237
 28 Cal.App.4th 141, 147 [emphasis added].) *Verdugo*’s reasoning rested on *America*

1 *Online, Inc. v. Superior Court* in which the court of appeal specifically applied this
 2 reversed burden of proof to a forum selection clause based on the CLRA's provision
 3 that, "[a]ny waiver by a consumer of the provisions of this title is contrary to public
 4 policy and shall be unenforceable and void," (Civ. Code. § 1751). *Am. Online, Inc.*
 5 (2001) 90 Cal.App.4th 1, 11.) *Song-Beverly* contains the same provision: "Any
 6 waiver by the buyer of consumer goods of the provisions of this chapter, except as
 7 expressly provided in this chapter, shall be deemed contrary to public policy and
 8 shall be unenforceable and void." (Civ. Code § 1790.1.) Thus, "[w]here the effect of
 9 transfer to a different forum has the potential of stripping California consumers of
 10 their legal rights deemed by the Legislature to be nonwaivable, the burden must be
 11 placed on the party asserting the contractual forum selection clause to prove that the
 12 [statute's] antiwaiver provisions are not violated." (*Am. Online, Inc., supra*, 90
 13 Cal.App.4th at p. 11.)

14 To meet their burden, Defendants must first show that Plaintiffs **freely and**
 15 **voluntarily agreed to the forum selection clause.** (*Am. Online, Inc., supra*, 90
 16 Cal.App.4th at p. 12 ["Our law favors forum selection agreements only so long as
 17 they are procured freely and voluntarily"].)

18 **III. DEFENDANT HAS FAILED TO PROVE THAT PLAINTIFFS** 19 **FREELY AND VOLUNTARY AGREED TO THE FORUM** 20 **SELECTION CLAUSE**

21 Critically, Defendant fails to provide any evidence or declaration indicating
 22 that affirms at the time of purchase that Plaintiffs received, read, and agreed to the
 23 provisions in Jayco's Warranty prior to purchasing the vehicle. Notably, Jayco's
 24 Limited Warranty contains a provision forcing Plaintiffs' purported waiver of all
 25 California statutory rights under *Song-Beverly*, and thereafter contains the following
 26 provision *directly below* Defendant's limitation to Indiana:

27 **THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU**
 28 **MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM**
STATE TO STATE.

1 (Slabach Dec., Ex. B. at p. 13.)

2 Therefore, despite purporting to clearly and unequivocally limit any action and
 3 all claims that arise to Indiana, this limited warranty *immediately* contradicts its own
 4 language and terms, stating that the warranty **gives** specific rights, informing the
 5 consumer that ***they may have additional legal rights***, and makes no further trailing
 6 disclosure of any restriction of rights and remedies. This is not the sole portion of
 7 Defendant's Exhibit "B" permeated with such contradictions. The Jayco Limited
 8 Warranty simultaneously attempts to appraise Plaintiffs of their rights under state
 9 law, while stripping Plaintiffs of all of their rights and remedies under California
 10 state law. This act of front-loading notifications to consumers of the rights that they
 11 have in other states before inserting a clause stripping them of their rights in such
 12 states is little more than a ***deliberate*** attempt to misdirect consumers into thinking
 13 that they have certain rights in their own state when they actually have none, should
 14 this single provision control above all else.

15 California's *Civil Code* § 1653 states that, "[w]ords in a contract which are
 16 ***wholly inconsistent with its nature, or the main intention of the parties***, are to be
 17 rejected. *Civil Code* § 1653. [Emphasis added.] And [i]n cases of uncertainty not
 18 removed by the preceding rules, the language of a contract should be interpreted
 19 ***most strongly against the party who caused the uncertainty to exist***. *Civil Code* §
 20 1654 [Emphasis added.] Defendant's burden is to show that Plaintiffs **freely and**
 21 **voluntarily agreed to the forum selection clause**. *See, Am. Online, Inc., supra*, 90
 22 Cal.App.4th at p. 12. However, Defendant has failed to make a sufficient showing of
 23 such, given the lack of Plaintiffs signature on any such document or any admissible
 24 evidence indicating that Plaintiffs were provided with the warranty prior to purchase.
 25 Defendant, as the sole drafter of the limited warranty, must now have its provisions
 26 interpreted most strongly against it.

27 Any agreement to waive and/or limit the Plaintiffs' rights and remedies as to
 28 applicable law and forum was procured through misdirection. Defendant has thus

1 failed to meet its burden of showing Plaintiffs freely and voluntarily agreed to the
2 forum selection clause.

3 **IV. JAYCO'S FORUM SELECTION CLAUSE IS NOT ENFORCEABLE AS**
4 **A MATTER OF LAW**

5 *A. Jayco's Forum Selection Clause Violates California Public Policy*
6 *Because It Contains a Pre-Suit Jury Trial Waiver and California Has a*
7 *Compelling Interest that Matters Involving Consumer Claims Be Litigated*
8 *in California.*

9 California has a constitutionally granted and statutorily guarded jury trial
10 right. California Code of Civil Procedure § 631 (a) provides that "[t]he right to a
11 trial by jury as declared by Section 16 of Article I of the California Constitution
12 shall be preserved to the parties inviolate. [Emphasis added]. Further, Section 631(f)
13 provides that jury trial waivers may only be enforced in the specific circumstances,
14 none of which are present here.

15 Federal law's protection of the right to a jury trial is similarly preserved by
16 statute and the U.S. Constitution. See, e.g. Fed. R. Civ. P. 38.¹

17 The very last page of Jayco's Exhibit "B" (Warranty Registration)
18 contains a section titled, "Legal Remedies," which states:

19 **"ALL ACTIONS OF ANY KIND RELATED TO OUR**
20 **MOTORHOME SHALL BE DECIDED BY A JUDGE RATHER THAN**
21 **BY A JURY."**

22 Jayco's pre-suit jury trial waiver is clearly meant to be read in concert with
23 the forum selection clause and the choice of law clause contained therein.
24 Jayco's pre- suit jury trial waiver is not only void but it renders the entire forum
25 selection clause unenforceable, *ab initio*.

26 In 2005, the California Supreme Court held that state law does not permit a
27 pre-dispute contractual waiver of the right to jury trial. *Grafton Partners v.*

28 ¹ Rule 38 provides "(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution—or as provided by a federal statute—is preserved to the parties inviolate.

1 *Superior Court* (2005) 36 Cal. 4th 944. The Court held that a jury trial waiver
 2 could only be accomplished under the specific methods set forth in section 631(f)
 3 the *Code of Civil Procedure* or by selecting a nonjury forum authorized by
 4 statute, such as arbitration (CCP 1231) or a trial by referee (CCP 638). But,
 5 ***the parties to an agreement cannot validly decide in advance that any dispute***
 6 ***will be resolved in only a court trial.*** Such a contractual pre-suit waiver, exactly
 7 like the one contained in Jayco’s warranty documents, is void, *ab initio* and cannot
 8 be enforced.

9 “California courts will refuse to defer to the selected forum if to do
 10 so would substantially diminish the rights of California residents in a way that
 11 violates our state’s public policy.” *Am. Online, Inc. v. Superior Court* (2001) 90
 12 Cal. App. 4th 1, 12. Also see (*Intershop Communications v. Superior Court* (2002)
 13 104 Cal.App.4th 191, 199-200 [“a forum selection clause will not be enforced if to
 14 do so would bring about a result contrary to the public policy of this state”]; *Hall v.*
 15 *Superior Court* (1983) 150 Cal.App.3d 411, 416-417 [“an agreement designating
 16 [a foreign] law will not be given effect if it would violate a strong California public
 17 policy ... [or] result in an evasion of ... a statute of the forum protecting its
 18 citizens”], internal quotations and citations omitted.) The principles set out in these
 19 cases were recently reaffirmed in *G Companies Mgmt., LLC v. LREP Arizona*
 20 (2023) 88 Cal.App.5th 342, 353. (Review denied).

21 Along the same lines, a choice of law clause will not be enforced if the
 22 chosen state’s law is contrary to a fundamental policy of California and
 23 California has the materially greater interest in enforcement. *Nedlloyd Lines*
 24 *B.V. v. Superior Court* (1992) 3 Cal. 4th 459, 466. *In re County of Orange* (9th
 25 Cir. 2015) 784, F.3d 520, the Court reasoned that the jury trial right is
 26 “intimately bound up with the state’s substantive decision making and it
 27 serves substantive state policies of preserving the right to a jury trial in the
 28 strongest possible terms, an interest the California Constitution zealously

guards.” Further, under *In re County of Orange*, when a federal court sitting in diversity (as this one is) is evaluating a pre-suit jury trial waiver, it *must* apply the relevant *state law* when that law is more protective than federal law. *In re County of Orange, supra*, 784 F.3d at 531-532.

California’s inviolate jury trial right takes precedence here. Jayco’s forum selection clause cannot be enforced because doing so would give life to a jury trial waiver that case law recognizes is void *ab initio* and would amount to a court sponsored violation of Plaintiffs’ constitutional and statutory rights protected by California and Federal law.

B. Jayco’s Warranty Terms, Including the Forum Selection Clause, are Unenforceable and “Entirely Plain” Violations of Public Policy under Song-Beverly’s Express Anti-Waiver Provisions.

In deciding whether a forum selection clause violates the statute’s anti-waiver provision, the court should not construe the clause in isolation, as Defendants urge; **forum selection clauses must be read together with choice of law clauses** because they are “inextricably bound up” to prevent a buyer from invoking California’s Song-Beverly protections. (See *Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 154, quoting *Hall v. Superior Court, supra*, 150 Cal.App.3d at p. 416.) Here, Jayco’s Warranty contains the following paragraph:

EXCLUSIVE JURISDICTION FOR DECIDING LEGAL DISPUTES RELATING TO AN ALLEGED BREACH OF WARRANTY OR ANY REPRESENTATIONS OF ANY NATURE, MUST BE FILED IN THE COURTS WITHIN THE STATE OF MANUFACTURE, WHICH IS INDIANA. THIS LIMITED WARRANTY SHALL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF INDIANA. UNLESS PROHIBITED BY STATE LAW, ALL CLAIMS, CONTROVERSIES AND CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS LIMITED WARRANTY SHALL BE GOVERNED BY THE LAWS OF THE STATE OF INDIANA, INCLUDING ITS STATUTE OF LIMITATIONS, WITHOUT GIVING EFFECT TO ANY CONFLICT

1 OF LAW RULE THAT WOULD APPLICATION OF THE LAWS OF
2 A DIFFERENT JURISDICTION. (Slabach Dec., Ex. B. at p. 13.)

3 Clearly, this paragraph is intended to waive buyers' rights under California
4 law, specifically *Song-Beverly*. As Indiana law requires that a covered good is one
5 that is sold to a buyer in Indiana, and the entirety of this transaction occurred in the
6 state of California, Indiana's equivalent lemon law strip California purchasers like
7 Plaintiffs of their legal rights in this state, and sends them to a state where they have
8 little to no rights at all. *Indiana Code* § 24-5-13-5.

9 In addition, the "whole contract is to be taken together, so as to give effect to
10 every part, . . . each clause helping to interpret the other." *See, Civil Code* § 1641.
11 Looking at the Warranty as a whole, the terms and clauses clearly violate Song-
12 Beverly and are, therefore, unenforceable and void per statutory language. (Accord
13 *Armendariz v. Foundation Health Psychcare Services, Inc.*, *supra*, 24 Cal.4th at p.
14 100 ["Agreements whose object, directly or indirectly, is to exempt [their] parties
15 from violation of the law are against public policy and may not be enforced"].)

16 As early as June of 2023, the Court of Appeals has affirmed the need to
17 invalidate contracts on grounds of public policy violations when the violation is
18 "entirely plain" and "clearly injurious to the interests of society." *Rheinhardt v.*
19 *Nissan North America, Inc.* (2023) 92 Cal.App.5th 1016, 1028. The Court of
20 Appeals began by affirming that the purpose of the *Song-Beverly* Consumer
21 Warranty Act was to address difficulties consumers faced in enforcing express
22 warranties, being frequently frustrated in their attempts to hold manufacturers
23 accountable to their promises. (*Id.*, at 1024.) The Court of Appeals further affirmed
24 the purpose of the act as a "manifestly remedial measure, intended for the protection
25 of the consumer", and further affirmed that the act should be given "a construction
26 calculated to bring its benefits into action." (*Id.*, at 1026-1027.) The Court, having
27 undertaken an analysis of *Verdugo*, further stated that even "favored contracts or
28 contractual provisions" were subject to invalidation if doing so would "substantially

1 diminish the rights of California residents in a way that violates our state’s public
 2 policy,” and focused on giving effect to the Act’s manifestly remedial and consumer
 3 protection purposes in finding the release in *Rheinhart* void as a matter of public
 4 policy. (*Id.*, at 1028, 1034-1035.) Despite the plaintiff in *Rheinhart* having signed an
 5 agreement that he had read the agreement and fully understood it, the Court of
 6 Appeals found that, in reality:

7 There is no evidence otherwise that Rheinhart, who was unrepresented
 8 by counsel, was aware of his rights under the Act or its antiwaiver
 9 provision. He did not expressly waive his rights under the Act. The
 10 circumstances suggest unequal bargaining strength between a consumer
 11 unaware of his rights and **a manufacturer seeking to circumvent its
 12 statutory obligations.** (*Id.*, at 1035.) [Emphasis added.]

13 Here, as in *Rheinhart*, Jayco is clearly seeking to circumvent its statutory
 14 obligations. None of the provisions cited earlier within this opposition have had an
 15 effect other than to waive or otherwise restrict Plaintiffs’ unwaivable statutory rights,
 16 and thus the entirety of the purpose of these provisions have been to seek to
 17 circumvent its obligations under *Song-Beverly*. Nor does Jayco offer any facts that
 18 the purpose of its numerous waiver and restriction provisions, was offered for a
 19 purpose other than to circumvent its obligations. Jayco’s restriction of Plaintiffs’
 20 warranties, *both express and implied*, operate as an “entirely plain” violation of
 21 public policy, pursuant to *Civil Code* § 1790.1 and § 1793, which states in
 22 unequivocal terms that “a manufacturer [...] ***may not limit, modify, or disclaim***
 23 ***the implied warranties guaranteed by this chapter*** to the sale of consumer goods.”
 24 To permit Defendant to enter into illicit agreements with consumers in the first place
 25 and restructure such agreements at its leisure would be to promote the occurrence of
 26 such “entirely plain” violations of public policy.

27 ***C. Jayco’s Warranty Terms, Including the Forum Selection Clause, are***
 28 ***also Unconscionable Under Contract law.***

 The forum selection clause is also unenforceable because it is included in a
 contract of adhesion. (See *Sanchez v. Valencia Holding Co., LLC*, (2015) 61 Cal.4th

899, 911 [the defense of unconscionability applies to enforceability of a standardized contract the terms of which a consumer had no meaningful opportunity to negotiate.]; see also *Intershop Communications v. Superior Court*, *supra*, 104 Cal.App.4th at p. 201-202 [“A forum selection clause within an adhesion contract will be enforced ‘as long as the clause provided adequate notice to the [party] that he was agreeing to the jurisdiction cited in the contract’”], internal citations omitted.) “[T]he adhesive nature of [a] contract is sufficient to establish some degree of procedural unconscionability.” (*Id.* at p. 915.) “[T]he substantive unfairness of the terms must be considered in light of any procedural unconscionability. The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement.” (*Id.* at p. 912.) Because the Warranty contains “terms that are ‘unreasonably favorable to the more powerful party,’” it is more than “‘a simple old-fashioned bad bargain,’” and thus substantively unconscionable. (*Sanchez v. Valencia Holding Co., LLC*, *supra*, 61 Cal.4th at p. 911, internal citations omitted.)

This court should find the forum selection clause unenforceable because it is both contrary to public policy and unconscionable. (See *Civil Code* § 1670.5 “[i]f the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, *or it may so limit the application of any unconscionable clause as to avoid any unconscionable result*”], emphasis added.)

V. DEFENDANT’S OFFER TO STIPULATE TO APPLICATION OF CALIFORNIA LAW IN AN INDIANA COURT DOES NOT CURE THE UNENFORCEABILITY OF THE FORUM SELECTION CLAUSE

Defendant argues Plaintiffs’ rights under California law will be preserved

1 because they will stipulate to the Indiana court applying Song-Beverly. (*See*, Def.
 2 Motion at 7:11-28, 8:1-28, 9:1-5.) The Court should be wary of this because the
 3 offered “stipulation,” which Plaintiffs reject outright, remains predicated upon a
 4 forum selection clause that is linked to a jury trial right. This stipulation does not
 5 cure, but instead adds, to the unenforceability of the forum selection clause.

6 In *Armendariz*, our Supreme Court discussed the court’s discretion under
 7 section 1670.5:

8 Comment 2 of the Legislative Committee comment on section 1670.5,
 9 incorporating the comments from the Uniform Commercial Code,
 10 states: “Under this section the court, in its discretion, may refuse to
 11 enforce the contract as a whole if it is permeated by the
 12 unconscionability, or it may strike any single clause or group of clauses
 13 which are so tainted or which are contrary to the essential purpose of the
 14 agreement, or it may simply limit unconscionable clauses so as to avoid
 15 unconscionable results.” (Legis. Com. com., 9 West’s Ann. Civ. Code
 16 (1985 ed.) foll. § 1670.5, p. 494 (Legislative Committee comment).)

17 (*Armendariz v. Foundation Health Psychcare Services, Inc.*, *supra*, 24 Cal.4th
 18 at p. 122.)

19 The court refused to use its discretion to cure an arbitration agreement by
 20 severing the illegal provisions, because the agreement had multiple such terms which
 21 together “permeated” it with an unlawful purpose such that there was no single
 22 provision the court could strike “to remove the unconscionable taint from the
 23 agreement.” (*Id.* at pp. 124-125.) The court stated it would have to reform the
 24 contract, “not through severance or restriction, but by augmenting it with additional
 25 terms,” which it was not authorized to do. (*Ibid.*) Similarly, here there are multiple
 26 illegal terms in the Warranty, all intended to waive the buyer’s rights under Song-
 27 Beverly, including the right to a jury trial. Thus, the agreement is permeated with an
 28 unlawful purpose such that striking a single provision could not remove the
 unconscionable taint from the agreement. This court’s imposition of Defendants’
 stipulation offer would be akin to augmenting the agreement with an additional

1 term—allowing unilateral modification by Jayco—which the court is not authorized
2 to do.

3 Moreover, the *Armendariz* court found the drafting party’s current willingness
4 to change certain provisions in the arbitration agreement did “not change the fact that
5 the arbitration agreement *as written is unconscionable and contrary to public policy*.
6 Such a willingness can be seen, at most, as an offer to modify the contract; an offer
7 that was never accepted. No existing rule of contract law permits a party to
8 resuscitate a legally defective contract merely by offering to change it.” (*Armendariz*
9 *v. Foundation Health Psychcare Services, Inc.*, *supra*, 24 Cal.4th at p. 125, emphasis
10 added.) The same is true in this case. The Warranty is unconscionable and contrary
11 to public policy *as written*. Defendants’ stipulation offer does not change that fact,
12 and it should be rejected as an impermissible attempt to modify the agreement in
13 order to resuscitate it.

14 In fact, endorsing the stipulation itself is contrary to California public policy.
15 By drafting and entering into warranty agreements that Defendants know contain
16 ***both*** conflicting notices of a consumer’s legal rights (as discussed previously) ***and***
17 illegal provisions under California law, they are acting in bad faith and conducting
18 an illegal scheme. (Accord *Armendariz v. Foundation Health Psychcare Services,*
19 *Inc.*, *supra*, 24 Cal.4th at p. 129 [employer who knowingly and routinely inserted
20 deliberately illegal clauses into arbitration agreement acted in bad faith and created
21 an illegal scheme].) Defendant’s benefit is that purchasers of defective motorhomes
22 may initiate a lawsuit in Indiana as directed by the warranty, only to find Indiana’s
23 lemon law excludes motorhomes and that they have lost their rights in California.
24 Some consumers will be discouraged to seek relief upon realizing they will have to
25 file suit in a distant forum. If Defendants know that the only consequence they will
26 face in a California court is severance of the choice of law clause or a stipulation to
27 sever the clause, they will not be deterred from drafting the illegal clauses in the first
28 place. (*Ibid.* “[A]n employer will not be deterred from routinely inserting such a

1 deliberately illegal clause into the arbitration agreements it mandates for its
 2 employees if it knows that the worst penalty for such illegality is the severance of the
 3 clause after the employee has litigated the matter. In that sense, the enforcement of a
 4 form arbitration agreement containing such a clause drafted in bad faith would be
 5 condoning, or at least not discouraging, an illegal scheme, and severance would be
 6 disfavored unless it were for some other reason in the interests of justice”].) It is
 7 significant that “relief afforded by the CRLA is unique, as its purpose is not simply
 8 to correct future private injury but to remedy a public wrong.” (*America Online*,
 9 *supra*, 90 Cal.App.4th at p. 16.) A stipulation here would work against remedying a
 10 public wrong.

11 At least one California court has found that identical stipulation offers would
 12 “contravene California public policy because it would not deter the drafter from
 13 including [the forum selection clause in combination with other clauses into the
 14 warranty]”, the selfsame reasons the Court in *Rheinhardt* considered when ruling
 15 against the Defendant motor vehicle manufacturer. (See *Waryck, et al. v. Jayco*
 16 *Motor Coach Inc.*, No. 22CV1096-L-MDD (S.D. Cal. Jan. 13, 2023), *Rheinhardt v.*
 17 *Nissan North America, Inc.* (2023) 92 Cal.App.5th 1016, 1033-1034.)

18 In addition, whether California law will indeed be applied upon the parties
 19 hypothetical stipulation, is for an Indiana court to decide. Therefore, at best,
 20 Defendants are speculating as to what an Indiana court might do and their assertion
 21 that California law “will apply” rings hollow. Essentially, Defendants are offering to
 22 stipulate to an uncertainty, and expecting Plaintiffs to gamble with their rights. This
 23 is the same the type of claim rejected in *Verdugo*—that the court in the other forum
 24 “would most likely apply California law”—as being “conclusory speculation.”
 25 (*Verdugo v. Alliantgroup L.P.*, *supra*, 237 Cal.App.4th at pp. 145, 158.)

26 This Court should follow principles of comity. “[T]he notion of ‘comity,’”
 27 Justice Black asserted, is composed of “a proper respect for state functions, a
 28 recognition of the fact that the entire country is made up of a Union of

1 separate state governments, and a continuance of the belief that the National
 2 Government will fare best if the States and their institutions are left free to perform
 3 their separate functions in their separate ways. This, perhaps for lack of a better and
 4 clearer way to describe it, is referred to by many as ‘Our Federalism’.” *Younger v.*
 5 *Harris* (1971) 401 U.S. 37, 44.

6 "Comity is a self-imposed rule of judicial restraint whereby independent
 7 tribunals of concurrent or coordinate jurisdiction act to moderate the stresses of
 8 coexistence and to avoid collisions of authority. It is not a rule of law but “one of
 9 practice, convenience, and expediency,” *Mast, Foos & Co. v. Stover Manufacturing*
 10 *Co.* (1900) 177 U.S. 458, 488. Recent decisions emphasize comity as the primary
 11 reason for restraint in federal court actions tending to interfere with state courts. See,
 12 e.g., *O’Shea v. Littleton* (1974) 414 U.S. 488, 499–504.

13 The only appropriate approach in response to Jayco’s suggested stipulation is
 14 that the Court reject the offer and abstain from using it as a “workaround” and the
 15 basis of granting the motion because the motion is already predicated on flimsy legal
 16 footing. Abstention was formulated by Justice Frankfurter for the Court in *Railroad*
 17 *Comm’n v. Pullman Co.* (1941) 312 U.S. 496. Other strands of the doctrine are that a
 18 federal court should refrain from exercising jurisdiction in order to avoid needless
 19 conflict with a state’s administration of its own affairs. *Burford v. Sun Oil Co.* (1943)
 20 319 U.S. 315. At bottom, the abstention doctrine instructs federal courts to abstain
 21 from exercising jurisdiction if applicable state law, which would be dispositive of the
 22 controversy, is unclear and a state court interpretation of the state law question might
 23 obviate the necessity of deciding an issue. That is the case here."

24 **VI. PLAINTIFFS WILL BE HEAVILY PREJUDICED BY DEFENDANT’S**
 25 **BELATED ATTEMPT TO SANITIZE AN UNENFORCEABLE**
 26 **AGREEMENT**

27 Jayco may claim that a stay is an appropriate contingency in the event an
 28 Indiana court does not apply California law, however, both the *Verdugo* and

1 *America Online* courts disagreed with this course of action. The *Verdugo* court
2 stated the defendant in that case “overstate[d] a trial court’s authority to resume an
3 action after staying it on forum non conveniens grounds,” because “the Texas
4 court’s decision to apply Texas law in deciding Verdugo’s claims would not make
5 Texas an unsuitable forum and would not necessarily allow the trial court to resume
6 proceedings on Verdugo’s claims.” (*Verdugo v. Alliantgroup L.P.*, *supra*, 237
7 Cal.App.4th at p. 162.)

8 Meanwhile, Plaintiffs will be heavily prejudiced by delay, in first having to
9 await determination of whether or not an Indiana court would apply Indiana state
10 law to the instant dispute. This process may take months, if not a year, for such a
11 determination to be made, and runs counter to the principle of eliminating
12 unnecessary delays. (Rule of Court Standard 2.1(a).) Plaintiffs will be further
13 prejudiced in having their right to choice of counsel impacted, as they will be left
14 with no alternative but to seek counsel in a jurisdiction outside both their place of
15 residence and outside of the location where every single event in relation to this
16 matter occurred.

17 Defendant’s stipulation offer is just that, an “offer.” For the various reasons
18 stated here, Plaintiffs understandably do not accept this offer. Thus, there is no
19 “stipulation agreement” for the court to enforce. There only remains the question of
20 the original forum selection clause’s enforceability, which should be unaffected by
21 Defendants’ offer to **belatedly** sanitize the clause.

22 Defendant’s offer of a stipulation should be rejected as it neither resuscitates
23 the invalidity of the forum selection clause, nor protects Plaintiffs’ unwaivable
24 rights under California law.

25 **VII. WITHOUT A VALID FORUM SELECTION CLAUSE, JAYCO’S**
26 **MOTION IS NOTHING MORE THAN A GENERIC MOTION TO**
27 **CHANGE VENUE THAT FAILS TO ESTABLISH THE HIGH**

BURDENS OF WITNESS CONVENIENCE OR MEETING THE ENDS OF JUSTICE UNDER 28 U.S.C. 1404(A).

As Jayco's motion noted, the U.S. Supreme Court recognized in both *Atlantic Marine* and *M/S Bremen* that forum selection clauses bear a "presumption" of validity. However, "presumptive" validity does not render enforcement absolute. Both cases recognized this and noted that circumstance exist where enforcement would be "unreasonable" or "seriously inconvenient." *M/S Bremen v. Zapata Off-Shore Co.* (1972) 407 U.S. 1, 19. Here, however, the issue is not one of simple "unreasonableness" or "serious inconvenience." The entire premise of Jayco's motion, a valid forum selection clause, is in question under California law. Indeed, Jayco's proposed "stipulation," as discussed above, confirms that even Jayco believes that its forum selection clause is on questionable legal footing. As such, when this Court separates the wheat from the chaff, it is evident that the "presumption" from *Atlantic Marine* or *M/S Bremen* has all but evaporated, relegating Jayco's motion to nothing more than a generic, statutory motion to change under 28 U.S.C. § 1404 (a) under which Jayco has likewise failed to carry its burden.

When deciding a statutory motion to transfer venue, Plaintiffs are entitled to a preference of their chosen forum and that choice of forum is entitled to great deference unless the moving party can show that other factors of convenience outweigh Plaintiff's forum choice. *Decker Coal Co. v. Commonwealth Edison Co.* (9th Cir. 1986) 805 F.2d 834, 843. This means that the moving party show that a transfer of venue will allow a case to proceed more conveniently and better serve the interests of justice. *Commodity Futures Trading Comm. v. Savage* (9th Cir. 1979) 611 F.2d 270. To do so, this Court must look at the private and public factors. Private-interest factors include: (1) relative ease of access to sources of proof; (2) availability of compulsory process for attendance of unwilling witnesses, and cost of obtaining willing

1 witnesses; (3) possibility of viewing subject premises; and (4) all other
2 factors that render trial of the cases expeditious and inexpensive. Public-
3 interest factors include: (1) administrative difficulties flowing from court
4 congestion; (2) imposition of jury duty on the people of a community that has
5 no relation to the litigation; (3) local interest in having localized controversies
6 decided at home; (4) the interest in having a diversity case tried in a forum familiar
7 with the law that governs the action, and (5) the avoidance of unnecessary
8 problems in conflicts of law. *Decker Coal Co., supra*, 805 F.2d at 843.

9 Here, all of the private and public factors weigh in favor of the Plaintiffs'
10 chosen forum in Riverside County. Beyond a corporate office, Indiana has no
11 connection with or interest in hearing a statutory lemon law applying the Song-
12 Beverly Act to a case about a vehicle that was purchased at Stier's RV Centers in
13 Temecula, California. Indeed, Indiana's courts are not equipped to properly apply
14 the Song-Beverly Act with all its nuances developed over forty (40) years
15 of litigation involving the Act.

16 Moreover, everything necessary to the effective prosecution and defense
17 of this case sits in California. All repairs were performed in California, all repair
18 records are maintained by the selling dealer located in California, all of the
19 dealer's technicians and critical witnesses are in California. There are
20 significant obstacles to obtaining jurisdiction over the attendance of the
21 important dealer and technical witnesses residing in California, to attend any trial
22 in Indiana. None of the critical witnesses can be compelled to testify at a lemon
23 law case in federal court in Indiana. With the exception of the Plaintiffs, none of
24 these witnesses could realistically be expected to leave their jobs or family to travel
25 to Indiana to testify for a matter that does not involve their personal interests or
26 their employer's interests.

27 In considering issues of venue, California courts have long noted
28 the importance of testimony from *live* witnesses. For example, in *J.C. Millett*

1 *Company v. Latchford-Marble Glass Co.* (1959) 167 Cal.App.2d 218, the court
 2 held that: [T]here are several logical and valid inferences arising from the
 3 averments in the affidavits to support the trial court's conclusion that the ends of
 4 justice would be better served by transferring the trial closer to the witnesses.
 5 In the first place, the witnesses would be readily accessible for immediate
 6 recall if further testimony was desirable, thus preventing needless delays. The
 7 obvious saving in the witnesses' time and expense in traveling also promotes
 8 justice. Furthermore, the ends of justice are better served by representing to
 9 the trier of fact oral testimony rather than submitting the same through
 10 depositions. *Id* at 167 Cal.App.2d at 227-228.

11 As further stated in *J.C. Millett*, "it is manifestly always more satisfactory
 12 and desirable, in jury cases in particular, to present the testimony firsthand to
 13 those who must determine the questions of fact, than to submit the same through
 14 depositions, which, in practicable effect, is always a sort of hearsay way of
 15 adducing the proofs." *Id* at 228.

16 More importantly, California has a direct interest, much more than Indiana,
 17 in protecting one of its consumers residing within its own state and administering
 18 the laws of its state, particularly where the issues emanate within California's
 19 borders. *See, e.g., Hernandez v. Burger* (1980) 102 Cal. App.3d 795, 802.
 20 ["Indeed, with respect to regulating or affecting conduct within its border, the
 21 place of the wrong has the **predominant** interest."]

22 California provides the appropriate forum for this case. California provides
 23 the most complete access to those individuals and information critical to the
 24 presentation of this case, both from the Plaintiff and defense perspectives. The key
 25 question then, is this: What possible state interest can Indiana have to enforce a
 26 California consumer's rights where every piece of documentary, physical and
 27 testimonial evidence is in California? Similarly, what possible interest can an
 28

1 Indiana judge or jury have in adjudicating a California consumer's rights? The
 2 answer to both questions is "None." Jayco's motion should be denied.

3 **VIII. STRIKING DEFENDANT'S FORUM SELECTION CLAUSE DOES**
 4 **NOT LEAD TO ABSURD RESULTS**

5 Defendant may argue in reply that to find fault with the warranty in its
 6 entirety rather than in part would lead to an "absurd result" in voiding the "entire
 7 warranty." However, Plaintiffs would address such an argument as follows: First, a
 8 finding of fault with Defendant's express warranty terms does not divest Plaintiffs of
 9 the benefits of the implied warranty of merchantability, nor does it divest them of
 10 remedies afforded under *Song-Beverly* arising from Defendant's alleged violation of
 11 the implied warranty. Second, *Civil Code* § 1608 states exactly that: "If any part of a
 12 single consideration for one or more objects, or of several considerations for a single
 13 object, is unlawful, the entire contract is void."

14 Second, as contemplated in *Rheinhart*, given the unequal bargaining strengths
 15 at play, and the fact that Plaintiffs had absolutely no input in the drafting of the
 16 express warranty agreement, any such result, if considered "absurd," is entirely a
 17 result of Defendant's own making, and such provisions must be construed most
 18 strongly against Defendant.

19 **X. CONCLUSION**

20 Based on the foregoing reasons, Plaintiffs respectfully request that this court
 21 deny Defendants' motion to transfer venue this action.

22 Date: February 22, 2024

THE BARRY LAW FIRM

23 By: /s/ Andrew P. Matera

24 DAVID N. BARRY, ESQ.

25 ANDREW P. MATERA, ESQ.

26 Attorneys for Plaintiffs,

27 LUIS TORRES and DOROTHY TORRES

DECLARATION OF ANDREW P. MATERA

I, Andrew P. Matera, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts in the State of California and this Court and I am an associate attorney with The Barry Law Firm, counsel of record for the Plaintiffs in this matter. I make this Declaration in support of Plaintiffs' Opposition to Jayco Motor Coach's Motion to Transfer Venue.

2. I am/was the attorney with primary handling responsibility of this matter and therefore, I have personal knowledge of all proceedings in this case. Accordingly, if called upon as a witness, I could and would competently testify to the following based upon my own personal knowledge.

3. In regard to Jayco's practice of seeking to enforce a forum selection clause in its warranty materials, I am intimately familiar with selected cases where Jayco or Thor Industries, Inc. (which owns Jayco, Inc.) has pursued such an approach. This familiarity is based upon my review of the case materials in these cases and extensive discussions with plaintiff's counsel in those cases. The following is pertinent to the handling of this matter.

4. In the matter of *Scott v. Jayco, Inc.*, in the Eastern District of California (1:19-cv-00315-JLT), Jayco attached a warranty with a venue provision to its motion to transfer to Indiana. The case was subsequently transferred to Indiana. Later, it was discovered that the warranty relied on by Jayco was not the warranty given to the plaintiff. Once informed of the fact that the warranty given to Mr. Scott contained no venue provision, the parties made another request to transfer the case back to California. The parties wasted nearly six months and the resources of both California and Indiana federal courts to end up in the exact same place that they started.

1 5. This was again true in *Frank v. Thor Industries Inc.*, which was
2 filed in the Northern District of California (5:15-CV-02692-HRL). That
3 case involved a 2015 Thor Tuscany. According to Thor's deposition testimony in
4 that matter, Thor decided to add a venue provision to its warranties at some
5 point between October 15, 2012 and April 29, 2013. According to the "process"
6 used by Thor for its warranties, there should have been no way that Mr. and
7 Mrs. Frank received a warranty without a venue provision. Yet, somehow they
8 did. And again, Thor had no explanation for how this happened.

9 6. In the matter of *Forkum v. Thor Industries Inc.* in the Eastern
10 District of California (2:17-CV-02196-TLN-CKD), Thor moved to transfer
11 venue based on a forum selection clause similar to the one at issue here. The
12 problem in that case is was that the plaintiff, Mr. Forkum had never seen the
13 warranty attached to Defendant's Declaration. The warranty given to Mr. Forkum,
14 and for which he signed a Registration and Acknowledgement of Receipt of
15 Warranty and Product Information, contained a very different venue provision
16 that was unenforceable for other reasons not relevant here.

17 7. Similarly, in the matter of *Lee v. Thor Industries Inc.* in the
18 Northern District of California (5:16-cv-05264-HRL). There, the plaintiff had
19 was given a warranty that contained *no* forum selection clause. At the deposition
20 of Thor corporate representative, he was asked to produce the warranty given
21 to Mr. Lee. Thor's representative produced a different warranty than the one
22 actually given to Mr. Lee. When asked how it was possible that Mr. Lee could
23 have received a warranty with no forum selection clause, Thor's representative
24 did not know.

25 8. The Defendant's supporting Declaration of Tina Slabach, Consumer
26 Affairs Manager for Jayco, Inc., indicating that the Jayco's Limited Warranty is
27 generally sent to dealerships and that "Jayco is aware of no evidence that the subject
28

1 Motorhome” was delivered to Plaintiff without the owner’s manual containing the
2 Jayco Limited Warranty, fails to authenticate the document. Defendant fails to
3 provide any evidence that Plaintiffs were provided Jayco’s warranty prior to
4 purchasing the Motorhome. Furthermore, Tina Slabach is not an employee of the
5 selling dealership and was not present during Plaintiffs’ purchase of the subject
6 Motorhome.

7 I declare under penalty of perjury under the laws of the State of California
8 and the United States that the foregoing is true and correct.

9 Executed this 22nd day of February 2024, in Los Angeles, California.

10
11 /s/ Andrew P. Matera
12 Andrew P. Matera
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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2024, I filed the foregoing document entitled **PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO TRANSFER VENUE TO INDIANA FEDERAL COURT PURSUANT TO 28 U.S.C § 1404 (A); DECLARATION OF ANDREW P. MATERA, ESQ.** with the clerk of court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record in this action.

/s/ David N. Barry